CRIMINAL APPEAL (DB) No.214 OF 1988

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Against the judgment and order dated 8.4.1988, passed by Sri Ram Kishore Singh, learned 10th Additional Sessions Judge, Munger, in Sessions Case No.215 of 1985.

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1. SARJUG MANJHI
2. JAGDISH MANJHI
3. YOGENDRA MANJHI
4. KAILASH MANJHI
5. KISHUN MANJHI: .... APPELLANTS

Versus

THE STATE OF BIHAR: .... RESPONDENTS

*****

For the Appellants: Mr. Arun Kumar Tripathi,
Amicus Curiae.

For the S t a t e: Mr. Lala Kailash Bihari Prasad,
Public Prosecutor.

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P R E S E N T

THE HON'BLE MR. JUSTICE SUDHIR KUMAR KATRIAR

THE HON'BLE MR. JUSTICE MADHAVENDRA SARAN

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S K Katriar
&
M. Saran, JJ.

The five appellants are aggrieved by the judgment dated 8.4.1988, passed by the learned 10th Additional Sessions Judge, Munger, in Sessions Case No.215 of 1985 (State of Bihar Vs. Saryug Manjhi and five others), whereby they have been convicted under section 302 read with Section 149 of the Indian Penal Code, and have been sentenced to undergo rigorous imprisonment for life. Appellant no.1 (Sarjug Manjhi), appellant no.3 (Yogendra Manjhi),

and appellant no.5 (Kishun Manjhi) have been further convicted under sections 147 and 323 of the IPC, and have been sentenced to undergo rigorous imprisonment for one year each under both counts. Appellant no.2 (Jagdish Manjhi) has been further convicted under sections 148 and 324 of the IPC, and have been directed to undergo rigorous imprisonment for one year under section 148, IPC and rigorous imprisonment for two years under section 324, IPC. Appellant no.4 (Kailash Manjhi) has been further convicted under sections 148 and 323 of the IPC and has been directed to undergo rigorous imprisonment for one year. All the sentences have been directed to run concurrently. It may be stated for the sake of completion of record that one Gareri Manjhi, a co-accused before the learned trial court, has been acquitted and his case does not arise for our consideration.

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2. According to the Fardbeyan (Exhibit-1) of Anup Lal Manjhi (P.W.5), recorded on 10.5.1983, at 10.00 P.M., with Dharhara Police Station, district Munger, that one Kishun Manjhi (appellant no.5), a resident of his village has been given two cows by the Dharhara Block which were not to be found for 15-20 days. On 10.5.1983, at about 7.00 P.M., Kishun Manjhi came to the place of the informant and

charged him of theft of cows which the informant denied and led to exchange of hot words. This was followed by very abusive language at the instance of the appellants. Appellant no.1 (Sarjug Manjhi) gave a call to assault the informant after entering into his house. Appellant no.2 (Jagdish Manjhi) was armed with a bhala. Kailash Manjhi was wielding Bijar (bow and arrow). Appellant no.1 (Sarjug Manjhi), appellant no.3 (Yogendra Manjhi), and appellant no.5 (Kishun Manjhi) were wielding lathis. Appellant no.2 (Jagdish Manjhi) thrust a bhala towards the informant which he wanted to catch hold of, and he suffered scratches on his neck and blood started oozing out. Appellant no.2 had delivered another bhala blow on the informant which hit him on his left armpit and the other accused persons delivered lathi blows. The appellants also delivered lathi blows on his father, Bango Manjhi. It is further stated in the Fardbeyan that Punai Manjhi (P.W.2), who was purchasing some articles in the shop of Anandi Sao across the road, was also struck by the Bijar released by appellant no.4 (Kailash Manjhi) and was injured. He was only trying to intercede and pacify the appellants. On hearing hulla, co-villagers, namely, Badri Manjhi (P.W.3), Samar Manjhi and others reached there and saved and

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protected the informant's side from further assault. On the arrival of the co-villagers the appellants fled away. The informant's father was seriously injured, was unable to work and his condition was critical. On these allegations formal F.I.R. was drawn bearing Dharhara P.S. Case No.0071 of 1983, dated 10.5.1983, under sections 147, 148, 324, 323 and 307 of the IPC. It is further relevant to state that Bango Manjhi died at about 12.00 in the night.

3. Investigation commenced, inquest report (Exhibit-4) was prepared and the dead body was sent for post-mortem. The post-mortem report is marked Exhibit-2. Anup Lal Manjhi, the informant (P.W.5), was also referred to the Medical Officer for examination of his injuries. The medical report is marked Exhibit-3. On conclusion of the enquiry, charge-sheet was submitted, cognizance was taken by the learned Additional Sessions Judge, who framed charges by his order dated 5.6.1986. He framed the charges against the appellants as well as Gareri Manjhi under section 302 read with section 149 of the IPC. Charges were also framed against Gareri Manjhi and Jagdish Manjhi (appellant no.2) under section 324 of the IPC. Charges were also framed against Sarjug Manjhi (appellant no.1), Yogendra Manjhi (appellant no.3), Kailash Manjhi (appellant

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no.4), and Kishun Manjhi (appellant no.5) under section 323 of the IPC.

4. The prosecution examined nine witnesses in support of its case. P.Ws.1 to 5 are eye-witnesses including Anup Lal Manjhi (P.W.5), the informant. P.W.6 is Naresh Prasad Sharma, the Officer in-Charge of Dharhara Police Station, who had taken charge of the investigation on 27.1.1985, from Chandraa Bhushan Choudhary. P.W.7 is Dr. Jagdish Sinha who had conducted the post-mortem examination on the dead body and the post-mortem report is marked Exhibit.2. P.W.8 is Sri Niwas Mishra who has examined the injuries of P.W.5 (Anup Lal Manjhi). P.W.9 is Jogeshwar Prasad Verma who was posted as Assistant Sub-Inspector of Police on 10.5.1983 in Dharhara Police Station. The Fardbeyan was recorded in his hand-writing. He had conducted the investigation, had prepared the inquest report, and had forwarded the dead body for post-mortem.

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5. The prosecution has proved the following documents:

Exhibit-1: Fardbeyan proved by P.W.5, and also testified by P.W.9.

Exhibit-2: The post-mortem report prepared by P.W.7.

Exhibit-3: The Injury report regarding P.W.5, prepared by P.W.8.

Exhibit-4: The inquest report proved by P.W.9.

6. The defence examined one witness, namely, Mahabir Bind (D.W.1).

7. The accused persons in their statements under section 313 of the Code of Criminal Procedure denied the occurrence and submitted that they were innocent and claimed to be tried.

8. The learned trial court found that the appellants were guilty of the murder of Bango Manjhi. He also found them guilty of causing injury to Anup Lal Manjhi (P.W.5). He found that the loss of the cows of Kishun Manjhi (appellant no.5) was the reason for the altercation leading to the death of Bango Manjhi and injuries to Anup Lal Manjhi (P.W.5). He accordingly convicted the appellants herein and sentenced them in the aforesaid manner. However, on account of lack of adequate evidence, Gareri Majhi was given the benefit of doubt and was acquitted.

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9. P.W.1 (Dip Narain Manjhi) is the agnate of the informant. He has deposed to the effect that about three years and two months ago, on a Tuesday, he was at his Darwaja at about 7.00 P.M. He noticed that the appellants were using abusive language against Bango Manjhi which led to exchange of hot words, whereupon Jagdish Manjhi (appellant no.2) had delivered two bhala blows on Anup Lal Manjhi which

injured him. He has also deposed to the effect that Jagdish Manjhi had delivered a bhala blow to Bango Manjhi (deceased). Sarjug Manjhi (appellant no.1), Yogendra Manjhi (appellant no.3), Kailash Manjhi (appellant no.4), and Kishun Manjhi (appellant no.5), had delivered lathi blows on Bango Manjhi. They took to their heels after delivering the blows. He has further stated to the effect that Kishun Manjhi had received two cows from the local block office which were stolen. Kishun Manjhi had charged Bango Manjhi of theft of cows leading to the problems between the two sides. Bango Manjhi died then and there on account of the injury which he had received. Anup Lal Manjhi had gone over to the police station to lodge the F.I.R. accompanied with P.W.1. He identified the five appellants who were in the dock.

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He has stated in his cross-examination that he has given the location of his house and has claimed to be an eye-witness. He has also deposed to the effect that darkness had not descended at the time of the occurrence and it was quite clear and visible. The abusive language at the instance of the appellants was spoken in his presence. P.W.1 and P.W.5 are agnates, and their houses are separate, but share a common *Angan.* He has also stated that the shop of Anandi Sao is about 10-15 steps away

from the house of Anup Lal Manjhi. The two are separated by a lane (Gali) flanked by houses. He has further deposed during the course of his cross-examination that when he went towards the place of occurrence, he had found 5-6 persons apart from the accused persons, namely, Badri Manjhi (P.W.3), Punai Manjhi (P.W.2), Jhigan Manjhi, Natho Manjhi, and Samar Manjhi. He has also stated to the effect that the assault had commenced with lathi blows followed by bhala blows. The assault was over within a period of half an hour to one hour. They were delivering lathi blows on Bango Manjhi. The assault (*मारपीट*) had taken place on the road. He has deposed to the effect that blood was found on the ground covering an area of 2-3 cubits (2-3 *हाथ*). He has also deposed to the effect that he had gone there again after half an hour of the occurrence, at that time Bango Manjhi was fighting for breath (*हुकुर-हुकुर कर रहा था*). He had noticed about 10-15 injuries on the person of Bango Manjh all of which were bleeding. He has also stated that Sarjug Manjhi (appellant no.1) is engaged in the business of loud-speaker. He has, however, denied the suggestion that Sarjug Manjhi at the time of the alleged occurrence was engaged in installing loud-speaker at village Sandalpur. P.W.1 has supported the core of the prosecution case and

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is particularly noticeable for the reason that he has deposed to the effect that Jagdish Manjhi (appellant no.2) had delivered a bhala blow on Bango Manjhi followed by lathi blows on him by other appellants. We must state that this part of his deposition is a little different from the version stated in the Fardbeyan which in substance is to the effect that only lathi blows had been delivered on Bango Manjhi and does not state that bhala blow was also delivered on Bango Manjhi. It is further noticeable that he has in his examination-in-chief deposed to the effect that after the blows had been delivered on Bango Manjhi, he died on the spot. He has, however, stated in his cross-examination that, after the assault (मारपीट) was over, he had gone into the house of Bango Manjhi after half an hour, and he had found that Bango Manjhi was gasping for breath. It is a mere repetition to state that the Fardbeyan stated that after the assault was over and the appellants took to their heels, Bango Manjhi was lying in a critical condition.

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10. P.W.2 is Punai Manjh. He is a co-villager and claims to be an eye-witness. He has deposed in his examination-in-chief that about three years and two months ago on Tuesday at about 7.00 P.M., he was purchasing some articles in the shop of

Anandi Sao. He noticed that Kishun Manjhi was abusing Bango Manjhi in the presence of Jagdish Manjhi, Kailash Manjhi, Yogendra Manjhi and Sarjug Manhi, then all of them started assaulting Bango Manjhi and his son Anup Lal Manjhi. Jagdish Manjhi was wielding a bhala and Kailash Manjhi was in possession of Bijar (bow and arrow). The genesis of the occurrence theft of two cows of Kishun Manjhi and they were charging Bango Manjhi of the same. He has further deposed to the effect that Gareri Manjhi (since acquitted by the learned trial court) had released an arrow from his Bijar which struck him on his back. Gareri Manjhi was also present along with the other appellants. He had got himself treated in the hospital. Bango Manjhi died on account of the injuries. He identified all the six accused persons who were in the dock.

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He has stated in his cross-examination that he has given the location of the shop of Anandi Sao. He was watching the occurrence from the shop. The place of occurrence and the shop are close to each other. He had received Bijar injury while he was standing at the shop and had become unconscious. He remained unconscious till about 12.00 in the night. Bango Manjhi had died before P.W.2 had received the Bijar injury. After P.W.2 had regained

consciousness, he had gone over to Bango Manjhi who was lying dead on the road. He had found injuries on the dead body. He had found a Bijar injury in his stomach. Blood was oozing out from his head and the body was full of injuries. Blood was oozing from his stomach as well as his head. The earth was soaked with blood. Gareri Manjhi had struck the Bijar from the house of Anup Lal Manjhi, and P.W.2 had received the Bijar injury while he was in the shop of Anandi Sao. He has also deposed to the effect that he has no enmity with Gareri Manjhi. He had shown his injury to the police officer and had thereafter gone over to Dharhara hospital for treatment the following day. He has also stated that one of the accused persons had a bhala in his hand, another one had a Bijar and the rest had lathis. He had noticed Gareri Manjhi at the time when he released the Bijar. He continued to be in possession of Bijar. He has further stated that Anup Lal Manjhi has one group to which he belongs, and the accused persons belong to another group. They treat Sarjug Manjhi as their leader.

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P.W.2 has also stated to the effect that Jagdish Manjhi had delivered a bhala blow on Bango Manjhi. He has on the whole supported the core of the prosecution case, appears to be a truthful

witness and the prosecution has not been able to elicit any significant contradiction in his deposition.

11. P.W.3 (Badri Manjhi), is an agnate of the informant. He has stated in his examination-in-chief that the occurrence had taken place about three years and three months ago on a Tuesday, late in the afternoon. While he was in his residence, he had heard the noise of quarrel. He went over towards the place of quarrel and found that Sarjug Manjhi, Jagdish Manjhi, Yogendra Manjhi, Kishun Manjhi, Kailash Manjhi and Gareri Manjhi were present there. Sarjug Manjhi was the order-giver and had called upon his associates to assault, whereupon Jagdish Manjhi and Yogendra Manjhi had delivered bhala blows on Anup Lal Manjhi. Sarjug, Kishun, Kailash had delivered lathi blows on Bango Manjhi who died on account of the injuries at about 12.00 in the night. Gareri Manjhi had injured Punai Manjhi by Bijar. The entire occurrence had taken place on account of theft of cows. Kishun Manjhi was blaming Anup Lal Manjhi of the theft of cows. Anup Lal Manjhi had replied that he is prepared to give the cows if five persons allege to that effect which had led to assault. He recognised all the six accused persons in the dock.

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He has stated in his cross-examination that he had made statement before the police. The Police officer had recorded his statement at about 6.00 A.M. on the next day. He had stated before the police that Gareri Manjhi had injured Punai Manjhi with his Bijar. He has further stated that he had gone over to the place of occurrence after hearing the quarrel over theft of cows. When he had reached there, he found that Dipan Manjhi, Prakash Manjhi, Somar Manjhi and Kesho Manjhi were present there. They were unable to silence them. After he had reached there, he had noticed that Anup Lal Manjhi was engaged in the quarrel which had gone on for 2-4 minutes. All the six accused persons were present there and were also wielding weapons. P.W.3 felt afraid that "मारपीट" may take place and, therefore, stood aside. After receiving the bhala blow, Anup Lal Manjhi had rushed to Dharhara. He had taken Bango Manjhi into his residence and he passed away at about 12.00 in the night. He has also spoken of the two groups, one of Anup Lal Majhi to which he belongs, and the other group of the accused persons. Both the sides are on dining terms.

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P.W.3 has, inter alia, stated that both Jagdish and Yogendra had delivered bhala blows on P.W.5, whereas the Fardbeyan says that Jagdish

Manjhi had alone delivered one bhala blow each on P.W.5. Except this minor contradiction of two bhala blows by Jagdish Manjhi alone, or one bhala blow each by Jagdish Manjhi and Yogendra on P.W.5, the prosecution has not been able to elicit any significant contradiction in the deposition of P.W.3. On the whole he seems to be a truthful and reliable witness.

12. P.W.4 is Shakunwa Devi and is the wife of P.W.5. She appears to be a completely illiterate witness and is not aware of her age also. She has stated in her examination-in-chief that the occurrence had taken place about three years ago on a Tuesday at about 7.00 P.M. She has stated to the effect that she was at the shop of Anandi Sao. Her house is close by. Kailash Manjhi and Kishun Manjhi came to her and stated abusive language against her and threatened that she should produce her husband failing which he would be done to death. Bango Manjhi, her father-in-law, appeared. She has further stated that Kishun and Kailash wanted to unleash the cows but Bango Manjhi said that he will not allow the same. This was followed by assault by the accused persons on Bango Manjhi and Anup Lal Manjhi with Bhala, Bijar and lathis. She has also stated to the effect that Yogendra Manjhi had delivered a

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Kulhari blow on her father-in-law. Sarjug Manjhi was the order-giver. Kishun Manjhi and Kailash Manjhi had also delivered lathi blows on Bango Manjhi who died at about 12.00 in the night. The occurrence had taken place because of theft of cows. She identified all the six accused persons who were present in the dock.

She has stated in her cross-examination that the abusive language had commenced at the shop of Anandi Sao and her husband and father-in-law were not present then. Assault took place soon after the "*गाली-गलौज*" had commenced. They have no quarrel with Badri Manjhi and others. About 10-15 persons were present, when the accused persons had started using abusive language against P.W.4. She has deposed to the effect that her father-in-law had received three Bijar injuries in his stomach. The head had been injured by *Kulhari*. A number of injuries were caused by lathi also, perhaps 50-100 lathi injuries. 3-4 bhala injuries were also delivered on the back and thigh. Her father-in-law died on the spot. No case had been registered on account of theft of cows.

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It appears that P.W.4 is an entirely illiterate and rustic woman. She is not aware even of her age. The most remarkable thing about her deposition is that there is no mention of her

anywhere else in the entire materials on record including the Fardbeyan. It appears to us that there is a reluctance amongst the members of that section of the society to expose their women to such public affairs, particularly the rough and tumble of litigation. She claims to be an eye-witness, has supported the core of the prosecution case, namely, the entire occurrence took place on account of the grievance relating to theft of cows, the sudden appearance of the accused persons on the place of occurrence, the commencement of the quarrel with abusive language, followed by assault on Anup Lal Manajhi and Bango Manjhi. She has stated the kind of weapons used by the accused persons and has in addition spoken of the use of a *Kulhari*. There is a minor contradiction in her evidence, inasmuch as the Fardbeyan and the other witnesses have deposed to the effect that the abusive language had first started against Bango Manjhi and Anup Lal Manjhi, whereas P.W.4 has stated that they had started abusive language first against her. But for the difference of version with respect to the details, she has supported the core of the prosecution case.

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13. P.W.5 (Anup Lal Manjhi) is a very important witness and is the informant. He has stated in his examination-in-chief that the

occurrence had taken place about three years ago on 10.5.1983, at about 7.00 P.M.. He was at his Darwaja. Kishun Manjhi had received a pair of cows from the Dharhara Block which were stolen about 10-20 days ago. Kishun Manjhi and Kailash Manjhi had appeared at the time of the occurrence and had started alleging about theft of cows followed by use of abusive language against Anup Lal Manjhi. Jagdish Manjhi was present with bhala, Gareri Manjhi with Bijjar, Yogendra Manjhi and Sarjug Manjhi with lathis. Sarjug Manjhi was the order-giver, whereupon Jagdish Manjhi delivered two bhala blows on him which landed on two portions of his body as a result of which he fell down. Kishun Manjhi, Yogendra Manjhi, Gareri Manjhi. Kailash Majhi, and Sarjug Manjhi assaulted his father. He went over to the police station along with Bipul Manjhi. His Fardbeyan was recorded at Dharhara police station at 10.00 P.M. It was recorded in the hand-writing of the Jamadar Saheb which was read over to him and he had affixed his signature on it. He identified his signature on Exhibit.1. He was forwarded to Dharhara hospital where his injuries were treated. His father died on account of the injuries in the mid-night. He identified all the six accused persons in the dock.

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He has stated in his cross-examination that he has given a description of the neighbourhood as well as shop of Anandi Sao. He has stated in his cross-examination that Kishun Manjhi and Kailash Manjhi had charged him of the theft of his cows. P.W.5 had complained of the same to the Mukhiya, who did not hold any Panchayati. He had not filed any Sanha as to the false allegation against him. The accused persons had engaged in using abusive language at the residence of P.W.5 which had gone on for about 2 minutes, followed by assault. Nobody had interceded. Assault had commenced after five minutes of the commencement of abusive language. About 5-10 men, and about 5-10 women, of the village were present at the time of the occurrence. He has stated that he had received three bhala injuries and 2-4 lathi blows, as a result of which he had fallen down. They did not assault him after he had fallen down and thereafter they assaulted his father. Punai Manjhi alias Prakash Manjhi had attempted to intercede and received Bijar injury from Gareri Manjhi. No other person had tried to intercede. Blood had oozed out of his injuries. Rain had taken place at that night at about 10.00 to 11.00 P.M. and had continued for about 1 to $1^{1}/_{2}$ hours.

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P.W.5 is the informant and has fully supported the prosecution case, except that he has stated in his deposition that he had received three bhala injuries, whereas the Fardbeyan states that he had received two bhala injuries. Furthermore, he has not stated in his deposition of the bhala injury or the Bijar injury on his father. We consider these to be minor contradictions. On the whole, he has impressed us as a truthful witness and the prosecution has not been able to elicit any significant contradiction in his deposition.

14. P.W.6 is Naresh Prasad Sharma, was the Officer in-Charge of Dharhara Police Station, i.e. on 1.2.1985. He had undertaken attachment of the property of Gareri Manjhi under the orders of the Superintendent of Police, Munger. He has submitted charge-sheet against the accused persons under sections 147, 148, 149, 323, 324, 307 and 302 of the IPC. He had taken charge of the investigation from Shri Chandra Bhushan Choudhary, Sub-Inspect of Police on 27.1.1985. Gareri Manjhi was then absconding.

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He has stated in his cross-examination that the investigation had been concluded before he took charge of Dharhara Police Station.

It appears to us that P.W.6 had made efforts to secure the attendance of Gareri Manjhi, who was absconding. He is not a witness of any significance.

15. P.W.7 is Jagdish Sinha, who was posted as Civil Assistant Surgeon at Sadar Hospital, Munger. He had conducted the post-mortem on the dead body of Bango Manjhi, the deceased on 11.5.1983, at about 12.00 noon. He had found the following injuries:

Rigor mortis was present.

(1) One incised wound 1"x$^{1}/_{2}$"x piercing into the abdominal cavity on the left side of abdomen 4" above the iliac crest.

On opening the abdominal cavity blood & blood clots were present and spleen was pierced in the area of $^{1}/_{2}$"x$^{1}/_{2}$"x$^{1}/_{2}$".

(2) Abrasion 1"x1"on the left side of the face.

(3) Lacerated wound 1"x$^{1}/_{4}$"x$^{1}/_{4}$"in the web between left little and ring fingers.

(4) Lacerated wound 2"x$^{1}/_{4}$"x bone deep on the central part of the head.

(5) Lacerated wound 1"x$^{1}/_{4}$"x skin deep in the right pinna.

All the injuries were ante-mortem caused by hard blunt substance may be by lathi, escapist. Injury no.1, was caused by sharp-cutting

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substance. Time elapsed since death within 24 hours. The post-mortem report is true and correct, in my handwriting and bears my signature. He has proved the post-mortem report and has been marked Exhibit.

He has stated in his cross-examination that the death had possibly taken place after 12.00 noon of the previous day. Injury no.1 was possible by Farsa or pointed portion of a sword. He has also found undigested food in the stomach. The injuries taken together were not possible by fall. However, injury no.1 is possible by fall with force on a pointed weapon. P.W.7 has deposed to the effect that Bango Manjhi had received one incised wound in the abdominal cavity, and the remaining injuries were caused by hard and blunt substance.

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16. P.W.8 is Dr. Shri Niwas Mishra, who was posted as Medical Officer at Dharhara Government Hospital on 11.5.1983. He had examined Anup Lal Manjhi on that day and had found the following injuries on his body:

(1) One incised wound on left side of neck, size $^{1}/_{2}$"x$^{1}/_{4}$"x$^{1}/_{4}$".

(2) One incised wound on right axilla, size $^{1}/_{2}$"x$^{1}/_{4}$"x$^{1}/_{4}$".

(3) One lacerated wound on left eyebrow, size $1x^{1}/_{2}"x^{1}/_{4}"$.

(4) One cylindrical bruise on back, size 2"x1".

(5) One bruise with swelling of lower eyelid, left eye, size 1"x1".

He has further stated that injuries were simple in nature. Injury nos.1 and 2 were caused by a sharp-cutting, pointed instrument, and injury nos.3, 4 and 5 were caused by hard and blunt substance, and were about six hours old. He has proved his injury report marked Exhibit.3.

He has stated in his cross-examination that there is no instrument to measure the size of injuries. The injuries of Anup Lal Manjhi were not possible by fall on thorny buses.

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The deposition of P.W.7 has given an objective view of the injuries received by Anup Lal Manjhi which is consistent with the prosecution case.

17. P.W.9 is Jogeshwar Prasad Verma. He was posted as Assistant Sub-Inspect of Police on 10.5.1983 at Dharhara Police Station. He had recorded the Fardbeyan of Anup Lal Manjhi which was read over to him and in token whereof he had affixed his signature on the Fardbeyan. He has identified the Fardbeyan. The same was entirely in his own

hand-writing and was marked Exhibit.1. He had inspected the injuries of Anup Lal Manjhi and had forwarded him for treatment. He had gone over to the place of occurrence at about 11.30 P.M. but the accused persons were traceless. He had inspected the dead body of Bango Manjhi, prepared the inquest report, and had forwarded the dead body for post-mortem to Sadar Hospital, Munger. He has proved the inquest report marked Exhibit-4. He has given a description of the place of occurrence and the surroundings including the shop of Anandi Sao. He has also stated to the effect that rains had taken place in the night, as a result of which he does not find blood at the place of occurrence. The residence of the accused persons was within a distance of about 100 yards from the place of occurrence. He had received the post-mortem report on 15.5.1983. He was transferred on 15.8.1983 and was, therefore, unable to submit the charge-sheet

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He has, inter alia, stated in his cross-examination that he had not inspected the place of occurrence during the night hours. He had gone over to the place of occurrence on the following day and had inspected the place of occurrence.

P.W.9 had conducted the investigation and his deposition does not appear to us to be of

much significance but, in any case, the defence has not been able to elicit any contradiction in his deposition.

18. D.W.1 is Mahabir Bind, and is a worker in Jamalpur work-shop. He has stated in his examination-in-chief that he knows all the accused persons as well as Anup Lal Manjhi and Bango Manjhi.He has deposed to the effect that no "मारपीट" or murder had taken place in his locality on 10.5.1983 between 6-7 P.M. He had on that day gone over to the residence of Sarjug Manjhi between 1.00 to 1.30 P.M. He had to be taken to Sandalpur to play band. He had left for Sandalpur along with Sarjug Manjhi at 3.30 P.M.. While on way, he had learnt at Bahiyar that Bango Manjhi and Anup Lal Manjhi had a quarrel with the owners of the garden because they were always stealing toddy. They were on that day caught red-handed while stealing toddy. On that day there was a Puja at the residence of Jagdish Yadav of Sandalpur.

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He has stated in his cross-examination that there was no written agreement with Sarjug Manjhi for playing band. Jagdish Yadav is his friend. He had stayed over night at the residence of Jagdish Yadav. He is no longer on visiting terms with Jagdish Yadav and he is also not aware whether or

not Jagdish Yadav is alive. He has repelled the suggestion that the occurrence relating to theft of toddy was false.

19. The learned Amicus Curiae has submitted that the evidence of the prosecution witnesses is inconsistent with the post-mortem report. In his submission, the Fardbeyan says that only lathi blows had been delivered on Bango Manjhi, whereas the witnesses including the medical officer who conducted the post-mortem (P.W.7) have deposed that he had also received a bhala injury. He has next submitted that, according to the post-mortem report, the death had taken place about 24 hours earlier, whereas the prosecution case is that he had died at 7.00 P.M. the previous day in the evening. He further submits that the presence of undigested food in the body shows that the death had taken place at about 12.00 noon the previous day. He next submits that no blood was found at the place of occurrence, whereas the prosecution witnesses have deposed to the effect that Bango Manjhi was profusely bleeding. He also submits that the place of occurrence is not clearly mentioned in the F.I.R.. He lastly submits that the evidence of every prosecution witness is in contradiction with others which render the same unreliable.

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20. The learned Public Prosecutor submits that minor contradictions about the kind of weapons used, and the number of injuries on the person of the deceased or the injured, do not cut at the root of the prosecution case. F.I.R. is not substantive evidence and can be used either for corroboration or for contradiction only regarding the version of the version-maker. He relies on the judgment reported in **A.I.R. 1997 S.C. 318 (State of Madhya Pradesh Vs. Dhirendra Kumar).**

He next submits that the prosecution is not bound to explain all the injuries. In case there is some contradiction regarding the injuries, then the onus is on the defence to put questions the prosecution witnesses in his cross-examination. In his submission, the charges under sections 323 and 324 of the IPC stand proved. However, even if the same fall, it should not make any difference to the ultimate result of the trial, inasmuch as the charge under section 302 read with section 149 of the IPC stand fully proved.

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He next submits that the presence of undigested food in the stomach is wholly irrelevant in the present case. He has also made submissions regarding the issues raised by the learned Amicus Curiae about the time of the occurrence. He has also

tried to explain the injuries. He also submits that in a case under section 302 read with section 149 of the IPC, it is not necessary to prove as to who had killed the deceased. He relies on the judgment reported in **A.I.R. 1989 S.C. 754 (Lalji and others Vs. State of U.P.)**. He lastly submits that the plea of alibi sought to be set up by D.W.1 who is wholly unreliable.

21. We have perused the materials on record and considered the submissions of learned counsel for the parties. The core of the prosecution case is that the two cows of Kishun Manjhi (appellant no.5) were missing for 15-20 days and he had developed suspicion that Bango Manjhi had stolen the same. This grievance had taken the accused persons to the residence of Bango Manjhi and Anup Lal Manjhi. The accused persons started using abusive language against the father and son who stoutly denied the allegation of theft. Enraged by the denial, they started assaulting the father and the son. Sarjug Manjhi was the order-giver and all the accused persons were variously armed. Two of them were armed with bhalas, one was armed with Bijar (bow and arrow), and the rest were armed with lathis. The assault was started by Jagdish Manjhi, who had delivered two bhala blows on Anup Lal Manjhi in

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quick succession which luckily escaped vital portions of his body leaving behind minor injuries. Anup Lal Manjhi fell down on the ground, as a result of which he escaped further injuries and did not die. The entire wrath was then showered on Bango Manjhi. Jagdish Manjhi had then delivered a bhala blow on Bango Manjhi, which had landed on his stomach and pierced it, resulting in profuse bleeding. Other accused persons present there with lathis rained lathi blows on him, as a result of which the old man fell on the ground in near-dead condition. However, he died at 12 o'clock. The core of the prosecution case is just the same in the Fardbeyan as well as in the entire range of the prosecution witnesses. To our mind, without any significant contraction, this has been fully and convincingly proved by the prosecution witnesses as well as the medical evidence. One would doubt the prosecution case only if hair-splitting arguments and minor contradictions like the nature of injuries, weapons handled by one or other, or the kind or nature of injuries inflicted by one or the other accused persons or one or the other of the prosecution party are entertained. It is evident on a perusal of the prosecution evidence that six persons variously armed, enraged by the theft of two cows vital for

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their livelihood, had suddenly descended on the place of occurrence, and must have thought that they would be able to elicit admission of theft by abusive language. But the admission did not come forth show of force resulting in assaults. In other words, the father and the son were taken by surprise by the sudden arrival of as many as six appellants variously armed who must have felt very humiliated by the use of unparliamentary and unprintable language used against them. In the rapidly moving events it would not be humanly possible for the prosecution witnesses to observe and remember the weapons being carried by six persons and the injuries caused by them on the victims. We are convinced that the alleged occurrence had taken place in the manner alleged by the prosecution. The five persons had committed the offence resulting in the death of Bango Manjhi, and simple injuries to Anup Lal Manjhi.

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22. The core of the prosecution case as set out in the Fardbeyan has been substantially corroborated by all the eye witnesses except that P.W.5 in his Fardbeyan says that he had received only two bhala blows which had scratched his body, whereas he has stated in his examination-in-chief that he had received three bhala blows. He has,

however, corrected himself in his cross-examination and placed himself in line with the version stated in the Fardbeyan that he had received two bhala blows. It appears to us that mention of one bhala blow extra in his examination-in-chief was mere a slip of the tongue. This is fully proved by the deposition of the prosecution witnesses that P.W.5 had received two bhala injuries which is equally corroborated by the deposition of P.W.8, the medical officer, who had examined his injuries. The prosecution cannot fail for a minor slip of the tongue.

23. There is yet another contradiction in the prosecution case as stated in the Fardbeyan on the one hand, and the evidence of some of the witnesses on the other. Whereas the Fardbeyan states that Bango Manjhi had received only lathi blows as stated by P.W.5 in his deposition, whereas some of the other prosecution witnesses ,not all of them, have deposed to the effect that he had also received bhala blow in his stomach. As stated hereinabove, the occurrence had taken place rapidly, and the first informant had received very humiliating, unprintable words from the prosecution party, followed in very quick succession by the assaults, leaving them unnerved, and it may not be humanly

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possible to remember that what injuries caused by whom and to whom and with which weapon. Furthermore, the Fardbeyan and the evidence of P.W.5 are to the effect that Bango Manjhi had received lathi blows. However, P.Ws.1 and 2 have deposed to the effect that he had received a bhala blow in his stomach which is fully corroborated by the post-mortem report of P.W.7. In other words, we are convinced on the basis of the deposition of P.Ws.1, 2 and 7 that Bango Manjhi had received a bhala injury which had pierced his stomach, had also received a number of lathi blows, all cumulatively resulting in his death. All the witnesses have consistently deposed to the effect that his dead body was full of wounds and each one of which was bleeding. We are, therefore, convinced that Bango Manjhi had died on account of bhala injury and was effectively supplemented by the lathi blows. In fact, the deposition on record including that of P.W.7, who had conducted the post-mortem, leaves a very clear impression in our minds that Bango Majhi would have perhaps died only of the lathi blows inflicted on him, and even if he had not received the bhala injury.

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24. On a plain reading of the post-mortem report, the learned Amicus Curiae has contended that the occurrence had taken place the previous day at

12.00 noon, which is further supported by the next finding in the post-mortem report that undigested food was found in the stomach of the dead body which means the occurrence had taken place the previous day at 12.00 noon, just after the lunch time. In other words, in his submission, the occurrence had not taken place at the time alleged by the prosecution which renders the prosecution case unbelievable. The contention is based on a complete misreading of the medical evidence. On the one hand, the prosecution witnesses without a shred of contradiction have stated that the occurrence had commenced at about 7.00 P.M., and all was over in about less than half an hour which means all was over by 7.30 P.M.. The question, therefore, arise for consideration whether or not the medical evidence is inconsistent with the oral testimony of the eye-witnesses. There is no reason to disbelieve the evidence of the prosecution witnesses who had personally seen the occurrence. P.W.7 had conducted the post-mortem on the dead body and found that "...Time elapsed since death within 24 hours...". The undoubted position is that the deceased had died at about 12.00 in the night and the post-mortem had taken place at about 12.00 noon the following day. The medical evidence on the face of it is evidently

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consistent with the prosecution case. The medico-legal jurisprudence is clear on the point that the time of death is a good deal on the basis of the experience of the doctor and would generally be rough estimate.

25. In so far as the presence of undigested food in the stomach is concerned, we have convincingly found hereinabove that the occurrence had taken place at 7.00 P.M. and was over within half hour. In other words, the deceased had taken his dinner before 7.00 P.M.. It is common knowledge that, on account of various reasons including absence of electricity in villages, they conclude their day including dinner quite early, to get up very early in the morning for agricultural operations in the cool atmosphere of the early morning. Bango Manjhi had fallen flat by 7.30 P.M. and very little life was left in him, as one of the witnesses had deposed that "*हुकुर-हुकुर कर रहा था*". In fact, his condition was such that some of the witnesses had thought him to be dead at 7.30 P.M.. He breathed his last at 12.00 in the night. In other words, in view of the near-death situation at 7.30 P.M., the body must have started functioning at the lowest pace resulting in accumulation of undigested food at 12.00 in the night when he breathed his last.

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We, therefore, conclude that the post-mortem report is fully consistent with the prosecution case.

26. The learned Amicus Curiae has also raised the question that no blood was found on the road where Bango Manjhi had received fatal bhala blow, and all the prosecution witnesses have consistently deposed to the effect that not only the bhala blow had resulted in profuse bleeding but in fact all his injuries were bleeding, which renders the prosecution case unbelievable. This is completely overlooking the evidence of the two prosecution witnesses including the I.O. that rain had taken place for about one to one and half hours after 10.00 P.M. that night. Such heavy rains would surely wash away the blood that must have fallen on the ground.

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27. He has also raised the contention that the deposition of the prosecution witnesses is full of contradictions which renders the prosecution case unbelievable. This issue has already been discussed hereinabove while dealing with his first contention and has been rejected.

28. The defence has tried to set up a case of the plea of alibi. They have first of all put a suggestion to P.W.1 in his cross-examination whether or not Sarjug Manjhi is engaged in hiring loud-

speaker and band. P.W.1 has also denied the suggestion that Sarjug Manjhi at the time of occurrence was playing loud-speaker elsewhere. In so far as the deposition of D.W.1 is concerned, it is first of all faced with the deposition of the eye-witnesses who have personally witnessed the occurrence and have truthfully deposed before the court. The same has to be read with the medical evidence which has been found hereinabove to be worthy of reliance. Secondly, the deposition of D.W.1 does not inspire confidence. It appears to be a concocted story without any material to support it. At one point of time he says that he was a good friend of Jagdish Yadav and had stayed with him over-night, but has not met him after 11.5.1983, and is not aware whether or not he is alive. He has also not stated what payment was made, what distance they had travelled from Dharhara to Sandalpur, the time taken in covering the distance, at what time the function had taken place, and what was the duration for which the band had been played. The deposition on the face of it is falsehood and created to set up a false case of defence of alibi.

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29. We, therefore, conclude that the appellants are guilty of the murder of Bango Manjhi and we accordingly affirm the conviction of the

appellants under section 302 read with section 149 of the IPC and sentence them to undergo rigorous imprisonment for life.

30. Next arise the question of conviction of the appellants under sections 147, 148, 323 and 324 of the IPC. The eye-witnesses have consistently deposed that they had assaulted both the father and son one after the other. Jagdish Manjhi had delivered two bhala blows on Anup Lal Manjhi, followed by lathi blows by others. It is a matter of sheer chance and to his great good luck that the two bhala blows scraped his body leaving behind minor injuries. This was also followed by lathi blows by others. It is fully testified by the medical report of P.W.8 who had examined the injuries of Anup Lal Manjhi. In that view of the matter, we uphold the conviction of the appellants under sections 147, 148, 323 and 324 of the IPC. They shall undergo rigorous imprisonment for one year on each count. All the sentences shall run concurrently.

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31. In the result, this appeal is dismissed. We uphold the conviction and sentences accorded by the learned trial court. Their bail bonds are cancelled and are directed to surrender before the learned trial court forthwith.

32. The High Court Legal Services Committee, Patna, shall pay a sum of Rs.2,000/- (Two thousand) to Mr. Arun Kumar Tripathi, learned counsel, who assisted us as Amicus Curiae. Let the first and the last page of the judgment be handed over to him.

(S K Katriar, J.)

(Madhavendra Saran, J.)

Patna High Court, Patna
Dated the 2nd day of September, 2008
S.K.Pathak/ (A.F.R.)

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